



U.S. Department
of Transportation
**Federal Highway
Administration**

Memorandum

Subject: INFORMATION: Guidance on the State
Assumption of Responsibility for
Categorical Exclusions (CE)

Date: April 4, 2006

From: Frederick Skaer, Director,
Office of Project Development
and Environmental Review

Reply to
Attn. of: HEPE

To: Directors of Field Services
Division Administrators

This memorandum provides the template Memorandum of Understanding (MOU) and guidance to implement Section 6004 of SAFETEA-LU, State Assumption of Responsibility for Categorical Exclusions. Divisions may begin the process of assigning responsibilities and liabilities for making project specific CE determinations to the State, and particularly to State departments of transportation (DOT). That assignment also may include the assignment of other environmental responsibilities for review, consultation, or other related actions. Divisions have the flexibility to decide the responsibilities to assign. The State assumption of responsibilities is accomplished by executing a MOU that is subject to public notice and comment.

Please share the template MOU and guidance with your State DOT partners as soon as possible. The opportunity for CE delegation is available immediately and is open to any State. Some States may decide not to assume these responsibilities. Divisions may modify the attached template MOU to suit the particular circumstances of their State. There is no time frame or deadline that would constrain when a division office and a State DOT may enter into a MOU in order to assign these responsibilities. Please coordinate the draft MOU with this office and the Office of Chief Counsel as indicated in the guidance.

Some divisions have entered into programmatic agreements (PAs) that streamline the administrative processing of CEs and compliance with other environmental laws and regulations. States may continue to operate under existing programmatic CE agreements. This MOU will supercede the PA for CE processing where it overlaps. If a State assumes responsibilities identified in other PAs, the State and division office will need to meet with the other parties to those agreements to discuss how projects processed under the MOU will be handled.



A FHWA Work Group comprised of the Headquarters and field staff, participated in the development of the template MOU and guidance materials. A special work group from the American Association of State Highway and Transportation Officials reviewed and provided comments on the template MOU and it was coordinated with the EPA Advisory Council on Historic Preservation, U.S. Army Corps of Engineers, Fish and Wildlife Service, National Oceanic and Atmospheric Administration, Council on Environmental Quality, and the Department of the Interior.

For further information or assistance please contact Owen Lindauer, at 202-366-2655 or owen.lindauer@fhwa.dot.gov, or Janet Myers, of the Office of Chief Counsel at 202-366-2019 or janet.myers@fhwa.dot.gov.

Attachments:

Template Memorandum of Understanding
Memorandum of Understanding Guidance
FHWA Questions and Answers on the Implementation of SAFETEA-LU Section 6004
Memorandum of Understanding Federal Register Notice Template